

NO PROCEEDINGS
TO BE HELD

10/19/92

Summary

01/12/92

AUG 19 1992

Employer Identification Number: [REDACTED]
Key District: [REDACTED]

Dear Taxpayer:

We have considered your application for recognition of exemption from federal income taxation under section 501(c)(3) of the Internal Revenue Code.

You were incorporated [REDACTED] to promote the [REDACTED] border area as an ideal location for retirement communities. Further, you plan to develop a retirement industry and attract retirees to the area. You state that development of such an industry would bring an infusion of capital to the area, which would create construction and service jobs, many of which will benefit the unskilled and unemployed people in the area. In short, the attraction of retirement dollars to the area would create a stable economic base, increase business and increase the tax base. You state that this would benefit the entire citizenry.

You state that unemployment in the [REDACTED] area is high. [REDACTED] has an unemployment rate of [REDACTED] percent which is twice that of [REDACTED]. [REDACTED] county with an unemployment rate of [REDACTED] percent is only slightly better than [REDACTED]. You state that you will work with government job service agencies in both states seeking candidates for training in the construction and care of the elderly industries. You have also stated that you will work with area colleges to develop skills in working with the elderly. You point out that the elderly would tend to hire unskilled labor directly. However, you have not clearly identified what role you would play in either the training or the finding of jobs for the unemployed in

[REDACTED]

the area. You have not described your relationship with the government agencies or how you will work with them in training or job placement. Further, you have not described the targeted groups nor have you described how your efforts will specifically assist any charitable class.

You state that the [REDACTED] area is considered a blighted area. However, you have not identified which agency has made this determination, nor have you presented any evidence of this blight. You have also stated that it has been identified as an area that is economically depressed and that you are working to remedy such deterioration through developing the retirement industry. You state that you will encourage private developers to build in blighted areas and that this conversion from deteriorated buildings to attractive housing will increase land values. You state further that you are working with the local governments and [REDACTED] to replace an unsafe bridge accessing one of the deteriorated areas. However, you have not identified your role or described your relationship to the government agencies in combatting blight. You conclude that this will provide jobs and make the deteriorated area more attractive. You conclude, further, that by developing the retirement community concept you will remedy the physical, economic, and social causes for deterioration of the community.

You state that you will lessen the burdens of government because the retirement industry will broaden the tax base for the local governments, increasing their revenues. Further, your hours of volunteer time to achieve such results will lessen governmental costs. You have submitted several letters from state and local governments. You state that these letters indicate that your program will lessen the burdens of government. These are letters of endorsement which note that the general improvement of the areas economic conditions would generally benefit the disadvantaged and relieve the government of caring for these persons.

You state that the development of the retirement industry comprises about [REDACTED] percent of your activities. The balance of your activities are divided among various projects. [REDACTED] percent of your activities are spent on a leadership development seminar program. About [REDACTED] percent of your activities involve city beautification including tree planting and clean up. About [REDACTED] percent of your activities involve the development of recreational facilities in conjunction with the city. About [REDACTED] percent of your activities involve the support for the city's acquisition of an armory as a convention center. And about [REDACTED]

percent of your activities involve fundraising to assist local schools in providing vocational training. You have abandoned your program to create a tourism trade.

Sections 501(a) and 501(c)(3) of the Code provide, in part, for the exemption from federal income tax of corporations organized and operated exclusively for charitable or educational purposes.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that to be exempt under section 501(c)(3) of the Code an organization must be organized and operated exclusively for charitable purposes.

Section 1.501(c)(3)-1(d)(1) of the regulations provides, in part, that an organization may be exempt under section 501(c)(3) of the Code if it is organized for charitable purposes. However, it is not organized or operated exclusively for a charitable purpose unless it serves a public rather than a private interest. Thus, an organization must establish that it is not organized or operated for the benefit of designated individuals.

Section 1.501(c)(3)-1(d)(2) of the regulations defines the term "charitable" in its generally accepted legal sense and it is not limited by the separate enumeration of exempt purposes in section 501(c)(3) of the Code. The term includes, inter alia, the relief of the poor and distressed, combatting community deterioration, and lessening the burdens of government.

Section 1.501(c)(3)-1(d)(3) of the regulations defines the term "educational" as including instruction of the individual for the purpose of improving or developing his capabilities.

In Better Business Bureau of Washington, D.C. Inc. v. United States, 326 U.S. 279 (1945), the taxpayer educated the public and local businesses about business fraud and the benefits of honest business practices. The Court found that such purposes were educational and charitable and beneficial to the public. However, it also found that a substantial purpose was to promote a profitable business community. The Court held that the presence of a single nonexempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes.

Rev. Rul. 68-14, 1968-1 C.B. 243, holds that an organization formed to promote the beautification of the city through clean up and tree planting qualifies for exemption under section 501(c)(3) of the Code.

Rev. Rul. 70-585, 1970-2 C.B. 115, describes four situations in which the organization assists individuals or families to obtain housing. In Situation 3 the organization has a purpose to rehabilitate housing in an area that is generally old and badly deteriorated where the median income is lower than other parts of the city. It then rents this housing at cost to low and moderate income families. These activities combat community deterioration and are charitable within the meaning of section 501(c)(3) of the Code.

Rev. Rul. 74-587, 1974-2 C.B. 162, holds that assisting business in a deteriorated area may be charitable. In this ruling the organization selects businesses in terms of the benefit to the community. Its objective is to assist businesses that will commit to employing and training the local unemployed.

Rev. Rul. 76-419, 1976-2 C.B. 146, holds that an organization that purchases blighted land and develops an industrial park providing favorable leases to businesses that locate in the park is exempt under section 501(c)(3) of the Code. In this case, the organization requires that the businesses that take advantage of the favorable leases hire and train the local unemployed. The purpose of the organization is to develop jobs for the area's underemployed and unemployed poor.

Rev. Rul. 77-111, 1977-1 C.B. 144, holds that an organization that promotes business in a deteriorated area is not charitable where the organization's activities benefit the area in general without limiting its benefits to a targeted charitable class of beneficiaries. Even though the organization may contribute to the achievement of purposes described in section 501(c)(3) of the Code, the overall thrust is to promote business rather than accomplish charitable objectives.

Rev. Ruls. 85-1 and 85-2, 1985-1 C.B. 177, 178, set out a two-part test for determining whether an organization's activities are lessening the burdens of government. First, it is necessary to determine whether the government unit considers the activities of the organization to be its burden. The second part of the test is to determine whether these activities actually lessen the burdens of the government. An activity is a burden of the government if there is an objective manifestation by the governmental unit that it considers the activities of the organization to be its burden. The interrelationship between the governmental unit and the organization may provide evidence that the governmental unit considers the activity to be its burden.

However, engaging in an activity sometimes undertaken by the government or an expression of approval by the government is insufficient to establish a burden of government. Whether the organization is actually lessening the burdens of government is determined by considering all relevant facts and circumstances.

Your activities are varied and many advance exempt purposes as described in your submissions. For example, your five month seminar program for leadership development is educational because it provides instruction of the individual to increase his capabilities. In some instances you waive the fee for the seminar program and provide the instruction free of charge.

Your tree planting, Christmas tree lights program and city beautification efforts further a charitable purpose within the meaning of section 501(c)(3) of the Code as discussed in Rev. Rul. 68-14, supra.

Your working with the local governments and raising funds for their projects may be charitable because in the limited areas of improving the recreational facility, providing support in the acquisition of the armory and funding certain educational programs, you may lessen the burdens of government. Although the file has not clearly demonstrated that the programs are governmental, it does appear that they may be. Assuming that these programs are governmental, your provision of support and funding for the programs may lessen the burdens of government within the guidelines of Rev. Ruls. 85-1 and 85-2, supra. However, prior to any ruling of exemption, you must demonstrate that the programs are clearly governmental.

Our primary concern is with your efforts to develop a retirement industry in the area. Organizations that work to improve the economic conditions of an area are not necessarily charitable. That is, improving economic conditions is not, in itself, a charitable purpose. However, organizations that benefit a targeted charitable class or the public through economic development may be charitable on several bases. You have claimed exemption under section 501(c)(3) of the Code on the bases of relief of the poor and distressed, combatting community deterioration, and lessening the burdens of government.

Although the poor and distressed may receive some benefit from your development of a retirement industry, we do not believe that you have limited your operations so as to ensure that the primary recipients of your activities will be the poor and distressed. The Service has long held that the promotion of business may be charitable if the purpose of the activity is to

benefit a charitable class. This principle is demonstrated in Rev. Ruls. 74-587, 76-419, and 77-111, supra. In situations where the organization maintains control so that it ensures that the targeted class benefits we will generally conclude that the organization is exempt under section 501(c)(3) of the Code. However, where the purpose is to generally improve business conditions and the benefits received by the charitable class are incidental to an improved economy, we will not conclude that the organization is exempt.

The materials that you have submitted indicate that your purpose is to develop the economy generally. You have not provided any assurances that businesses that are benefitted will function to train or hire members of the charitable class. Nor have you provided any guidelines to assure that the poor and distressed will be the beneficiaries of your activities. In these circumstances, we do not believe that your operations are set up to relieve the poor and distressed.

You also claim that your activities combat community deterioration. However, you intend to operate in several communities without providing any assurances that your activities will be restricted to old and badly deteriorated areas consistent with Rev. Rul. 70-585, supra, Situation 3. The Service has long held that where the activities of an organization incidentally or collaterally retard community decay, they do not combat community deterioration. However, where an organization's activities directly combat decay it may be described in section 501(c)(3) of the Code. We believe that your promotion of a retirement industry may have an overall beneficial effect, combatting the deterioration of the area. However, your purpose is to benefit the economy generally, rather than rehabilitate a deteriorated area. Thus, any benefit to the community in the retardation of deterioration is incidental to improved economic conditions. Accordingly, we conclude that you do not combat community deterioration within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations.

You also claim that you lessen the burdens of government. You base this claim on the fact that your operations will benefit the local governments because the improved economic conditions will increase revenues and reduce the government's obligations to care for the persons benefitting from improved economic conditions. As demonstrated in Rev. Ruls. 85-1 and 85-2, lessening the burdens of government requires a showing of some objective manifestation that the government considers your activities to be its burden. This objective manifestation is demonstrated by all the surrounding facts and circumstances. It

may be shown in a variety of ways including statutory authorization, historical governmental involvement in activities similar to yours, and interrelationship between you and the governmental entity.

In the present case you have not provided any objective manifestation on the part of the government that it considers the development of the retirement industry to be its burden. Moreover, even if the government did share this goal with you, it has not indicated that your promotional activities make up any part of its burden. The information in the file concerning government involvement in your activities concerns selection and training of persons to fill jobs created by the industry. Because of the very limited role of training in your overall activities we cannot conclude that working together in such a limited capacity provides the required objective manifestation. In addition, the letters of support from various governmental agencies do not provide the required objective manifestation. First, we have long held that mere letters of endorsement should be given little or no weight. Second, while the governmental entities endorsing your activities approve of what you want to do the content of the letters reveals that the governmental entities are not involved in your activities or any similar activities.

In sum, without demonstrating that the government has provided statutory authorization; that the government has not historically been involved in such projects; or that the government has a special involvement in your activities or interrelationship with you, you have not demonstrated the objective manifestation that the government considers your activities to be its burden.

Even if we assume that you can demonstrate a basis for exemption, we still cannot conclude that you should be exempt under section 501(c)(3) of the Code. It appears from the file that businesses or other nonexempt organizations may benefit from your activities. Because nonexempt organizations may benefit from your operations, this may be a disqualifying feature unless you can demonstrate that the benefit experienced by private interests is incidental to the accomplishment of your charitable purposes. This benefit must be incidental in both a qualitative and quantitative sense. To be incidental in the qualitative sense, the private benefit must be a necessary concomitant of the charitable purpose. Although the file is not clear, it appears that you may assist businesses in the promotion of the retirement industry. Although we do not have the facts to determine whether this may be incidental in a qualitative sense, because your

primary purpose is to promote businesses, private interests may benefit more than incidentally in a quantitative sense. Accordingly, you would not qualify for exemption under section 1.501(c)(3)-1(d)(1) of the regulations because you would serve a private rather than a public interest.

Even if we concluded that the promotion of the retirement industry could accomplish a charitable purpose, you would still not be described in section 501(c)(3) of the Code. That is, your primary purpose, the promotion of industry to improve the general economic conditions, is not an exempt purpose. Even if this function serves the charitable purpose of relieving the poor and distressed or combatting community deterioration, it also serves the nonexempt purpose of promoting the industry. This substantial nonexempt purpose defeats exemption no matter the number and quality of any exempt purposes you serve.

Based on all the foregoing reasons, we hold that you do not qualify for exemption from federal income tax as an organization described in section 501(c)(3) of the Code. Therefore, contributions to you are not deductible under section 170 of the Code. You are required to file federal income tax returns on Form 1120.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days from today and must be signed by one of your principal officers. When sending a protest or other correspondence with respect to this case, you will expedite its receipt by placing the following symbols on the envelope:

[REDACTED]. These symbols do not refer to your case, but rather to its location.

You also have the right to a conference in this office after your protest statement is submitted. If you desire a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your principal officers, that person must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceedings unless the United States Tax Court, the United States Claims Court, or the District Court of the United States for the

[REDACTED]

District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to the District Director for your key district. Thereafter, any questions about your federal income tax status should be addressed to your District Director. The appropriate State Officials will be notified of this action in accordance with section 6104(c) of the Code.

Sincerely,

[REDACTED]
Chief, Exempt Organizations
Rulings Branch 1

cc: [REDACTED]
Attn: EO Group

cc: *State officials,* [REDACTED]
Murphy
3/17/94

[REDACTED]

4/1/92
3/17/92